

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION**

**Call to Order:** By **CHAIRMAN BOB STORY**, on January 30, 2001 at 8:00 A.M., in Room 472 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Bob Story, Chairman (R)  
Rep. Ron Erickson, Vice Chairman (D)  
Rep. Roger Somerville, Vice Chairman (R)  
Rep. Joan Andersen (R)  
Rep. Keith Bales (R)  
Rep. Joe Balyeat (R)  
Rep. Gary Branae (D)  
Rep. Eileen Carney (D)  
Rep. Larry Cyr (D)  
Rep. Rick Dale (R)  
Rep. Ronald Devlin (R)  
Rep. John Esp (R)  
Rep. Gary Forrester (D)  
Rep. Daniel Fuchs (R)  
Rep. Verdell Jackson (R)  
Rep. Jesse Laslovich (D)  
Rep. Trudi Schmidt (D)  
Rep. Butch Waddill (R)  
Rep. Karl Waitschies (R)  
Rep. David Wanzenried (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Jeff Martin, Legislative Branch  
Rhonda Van Meter, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 362, 1/24/2001; HB 369,  
1/24/2001  
Executive Action: HB 369

**HEARING ON HB 362**

**Sponsor:**     **REPRESENTATIVE JOE MCKENNEY, HD 49, Great Falls**

**Proponents:**     **Mike Allen, Allen's Inc.**  
                         **Carol Lambert, WIFE**  
                         **Joe Mazurek, City of Great Falls**  
                         **Art Loendorf, Montana Farmers Union**  
                         **Bob Stephens, Montana Grain Growers Association**  
                         **and Montana Farm Bureau**  
                         **Shirley Ball, EPAC**  
                         **Gary Hebener, Agri Technology Company**  
                         **John Lawton, City of Great Falls**  
                         **Tim Babcock**  
                         **Representative Trudi Schmidt**

**Opponents:**     **None.**

**Opening Statement by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 2.0}***

**REP. MCKENNEY** said this bill is a proposal to exempt from taxes all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain. This will be during the construction phase of facilities and for 10 years after completion of construction. There is currently an ethanol plant being proposed to be built in Great Falls, which is a \$262 million project that will provide 500 temporary jobs during the two-year construction phase and more than 100 high paying permanent jobs after completion. This facility would use up to 30 million bushels of barley and grain, which is nearly 1 million acres of production or 13% of Montana's total grain production in 1998. This will be a new industry for the state and a new market for our grain producers.

**Proponents' Testimony:**

***{Tape : 1; Side : A; Approx. Time Counter : 4.5}***

**Gary Hebener, President, Agri Technology Company,** said they are the developers of the ethanol plant in Great Falls. They have been working on this project for so long because financing for large projects such as this is difficult to attract. Ethanol is an energy product, but it comes from grain, so it is an agricultural industry. They have a lender who is prepared to advance \$200 million, and they have gathered together a group of

institutional lenders that will provide the remaining \$62 million in equity financing; however, they have set certain conditions. One of the conditions is that they find a way to mitigate the high cost of property tax at the chosen location. Reducing the tax will be beneficial to the community and state. The 10-year exemption will result in helping them complete their financing, which will result in more than 100 new jobs just within the plant itself. They do not see that they would be taking money from any existing source or programs. The project will bring prosperity to Montana farmers and add value to products Montana has been successful producing. Each bushel of grain bought at around \$3.00 per bushel will leave the plant at a value of \$8.00 per bushel.

**John Lawton, City Manager, City of Great Falls,** said this ethanol plant is important to the Great Falls community and the state because of employment and market for grain. It is one quarter of a billion dollars worth of improvement to the community and will have a great effect on the prosperity of Great Falls and the Central Montana region. By providing this tax relief, the state and local governments are not giving up anything. Right now there is just a wheat field, and the taxes on this field bring in less than \$1000 per year. The land and buildings for the plant will still be taxable in this bill. This tax break will replace an increment tax break which they had originally planned to use for this project. Tax increment no longer works for this project because of reduction in personal property tax enacted by the last legislature. Under this proposal, the taxing jurisdiction will realize more in taxes sooner than it would have under the tax increment scenario. This tax break is consistent with other tax breaks granted for other facilities in Montana, such as Canola and Malt Barley.

**Shirley Ball, Executive Director, Ethanol Producers and Consumers,** said their office receives a lot of requests for information on how to establish an ethanol plant. There is a lot of interest right now because there is a huge market demand for ethanol. It is a clean fuel that is needed in many communities that have pollution problems. Funding is the hardest part about starting an ethanol plant. **EXHIBIT (tah24a01)** There is currently no ethanol production in Montana, but every state and province around Montana has an ethanol plant. People ask why Montana does not have one, and she does not have the answer, but this bill is a possible solution to help establish ethanol production in Montana.

**Mike Allen, President, Allen's Inc.,** said they supply gasoline, diesel fuel, lubricants, and ethanol. They sell ethanol in the raw form and gasohol, and right now he is buying the ethanol out

of Canada, so every dollar used to buy ethanol is not only going out of the state but out of the country. He would like to be able to have a competitive supply of ethanol in Montana. It is a good product that works well. They have commercial accounts that use it for the environmental and performance benefits.

**Carol Lambert, W.I.F.E.**, said they believe ethanol might be the salvation of Montana agriculture or at least go a long ways toward keeping it in production. Anything that can be done to help produce at a lower cost they support. They also support the cleaner environment that ethanol provides.

**Bob Stephens, Montana Graingrowers Association & Montana Farm Bureau**, said Burlington Northern is requiring agriculture to build 100-unit terminals. In Great Falls where the plant will be built, there is 30 million bushels of grain from that area that will be used at the plant that Burlington Northern will not get to haul. The closest terminal being built currently is 45 miles from Great Falls, so considering the use of the highway by trucks to haul 30 million bushels of grain, that will savings enough. Burlington Northern can easily take the profit out of grain by raising the freight costs.

**Art Loendorf, Montana Farmers Union**, said ethanol is a good use for grain, and the bi-products can be used for cattle feed, which could help develop some feedlots into Montana.

**Tim Babcock** said this a project they have been pursuing for some time. They have spent the time because they believe it is an industry that will develop in Montana. Minnesota now has 12 plants, and there is no reason we cannot do that in Montana. This bill is a step in the right direction to start some industry that will bring good paying jobs.

**Representative Schmidt** said in the last session tax breaks and incentives were given to quite a few specialized groups, so it is time to consider an ethanol plant. This is a fairness and consistency issue.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

***{Tape : 1; Side : A; Approx. Time Counter : 24.9}***

**REP. JACKSON** asked what the break even point would be in terms of the cost of gasoline and paying \$3.00 per bushel for barley.

**Mike Allen** said the cost of the finished product blended with gasoline is within 1/10 or 2/10 a cent of regular gasoline. This

is a better product because there is more octane. **REP. JACKSON** asked what the octane is and if it could be used in cars that require higher octane. **Mike Allen** said it can be used, and all the major automotive manufacturers approved the use of ethanol blends in their vehicles. Ethanol adds three octane points to the fuels it is blended with. In Montana, unleaded is typically 85.5, and when blended with ethanol, you can add three octane points. Premium unleaded is 91 octane, and you could add three points. **REP. JACKSON** asked if other grains are as effective as barley, such as wheat and corn. **Gary Hebener** said they are, and in fact most of the ethanol manufactured today in the United States is from corn. About the same amount of ethanol can be made from a bushel of barley or wheat as from a bushel of corn. The end product is exactly the same. The difference is what else can be made from that bushel. In the case of corn processors, if it is a dry mill they produce 75% ethanol and 25% distillers dry grains used as animal feed. Some of the largest corn producers use a wet mill process and extract the oil and germ to make other products, such as corn oil and high fructose corn sweeteners for soda pop. At the proposed Great Falls plant, they have a dry mill that will process 75% of the grain they buy, which is barley. This converts the starch to ethanol and preserves the fiber, protein, vitamins, and minerals for animal feed. They will also have a wet mill that will process only wheat, 25% of total grain purchases per year. The protein is first extracted as a baking additive, the remaining starch goes into the fermentation process of ethanol, and the remaining fiber and nutrients becomes animal feed. The animal feed will run around 33% protein and 7% fat, which is good for all types of livestock. **REP. JACKSON** asked if they can compete with ethanol when gasoline prices drop to \$1.00 per gallon. **Gary Hebener** said they can compete. Grain prices change and the banks do not like to hear this. The largest cost of operating an ethanol plant is buying grain, which represents about 63% of average operating costs. The purchase price each year for buying grain is about \$85-95 million and compares with \$95-100 million in sales of grain related products. When grain prices go up, it carries with it the value of animal feed. The same is true when grain prices go down, so the value and price of feed goes down. The margin stays the same, and this combination of finished products is critically important means they are not as sensitive to change in grain price. Because the major operating cost is balanced by products sold that are tied to that, this leaves them focusing on energy. Ethanol is gasoline, so when the price of gasoline goes up, the price of ethanol goes up. Low prices for gasoline do not result in economic impairment to this project, and in fact they are able to manufacture a gallon of ethanol in the planned plant for approximately \$.82 per gallon. **REP. JACKSON** asked whether the manufacturer has taken into consideration the octane levels that

can be used in some types of cars and that it is not available in the higher octanes. **Gary Hebener** said pure ethanol is 114 octane. Ethanol is primarily used as an octane enhancer. Octane is what determines price of gasoline. When the gasoline distributor adds 10% ethanol, the octane depends on what gasoline was started with for mixing. Ethanol is also used as an oxygenate. The Clean Air Act amendments of 1990 required that gasoline distributors add oxygenates to gasoline in the cities that have the dirtiest air. There were initially 39 cities on that list, and Missoula, Spokane, Seattle, Portland, Vancouver, and most of the California coast was on that list. The oxygen causes the gasoline to burn more completely and therefore reduces air pollution from automobiles at an average of 1/3. It worked so well that the Federal government in 1995 implemented additional rules requiring other areas of the United States to add oxygen to their gasoline. Approximately 40% of gasoline sold in the United States must contain oxygen. There are two typical sources of oxygen, which are ethanol and a product extracted from other chemicals. This other product (MTBE) has a serious flaw in that its chemical makeup causes it not to break down once in the environment, so when it is stored in gasoline tanks and if there is even a small leak, it gets into the water and does not break down. It had shown up in many California water wells, and this product has been banned there effective 2003. This adds importance to building an ethanol plant in Montana, because as MTBE goes out of the marketplace in California and likely across the nation, the demand for ethanol just to meet today's oxygen consumption must go up by a factor of three. Over the last 20 years, there has never been a price for ethanol that would have made the Great Falls plant unprofitable.

**REP. WAITSCHIES** asked where else the Montana production of ethanol would be marketed. **Gary Hebener** said annual consumption of gasoline in Montana is around 500 million gallons. If 10% ethanol was provided for every one of those gallons, that would take 50 million gallons. 80 million gallons will be produced in the plant, so the ethanol will be sold first in Montana and then principally go west. Approximately 50-70 million gallons will go to the west and California.

**REP. WADDILL** asked if the development of genetically modified grains would have a significant impact on ethanol production. **Gary Hebener** said this is potentially a positive impact because it is a tool that will help Montana's grain producers be more profitable by being more pest and drought resistant. Within the plant it would not have any direct results, as it would not change the basic chemistry of the grain.

**REP. WANZENRIED** asked if the ethanol plant would be able to proceed without the passage of this bill. **Gary Hebener** said they have dealt with many factors and have found ways to overcome great obstacles, which the greatest is having brought together \$262 million of financing. He would not say the decision to grant this tax relief ensures they will be there, nor would the decision not to provide the tax relief guarantee they will not build the plant. A very important tool to bring this project together financially would be an exemption from property tax. The current property tax applied to the facility would require payment of \$2.5 million per year. Property taxes are the first thing a business must pay, so when they go to the lenders for a loan, they first calculate the direct operating costs, which includes property taxes. It is an important key, and if this tax relief was granted, it would make a tremendous difference in final approval for financing.

**REP. ERICKSON** asked if they are taking advantage of the value added 2% loan from the coal tax. **Gary Hebener** said they are not. They examined this opportunity, but there is a limitation imposed in that legislation that says for each job that is created, in their case 100 direct jobs, you may apply for loans in an amount of \$16,600 per job. They would qualify to apply for a loan of \$1.6 million. There is another tax rule in Montana that says if you use any public money for borrowing, you must pay a 1% gross receipts tax on construction. Their direct construction is over \$175 million, so if they applied for this legislation they could apply for \$1.6 million but would have to pay \$1.75 million in taxes that same year.

**REP. BALES** asked what the relationship in size of the proposed plant is to the plants across the nation. **Gary Hebener** said there are 55 operating plants in the United States with six other plants currently proposed. The largest plant is 285 million gallons per year production located in Decatur, Illinois. There are five other plants operating in the U.S. larger than the proposed Great Falls plant, which are around 100 million gallons per year. Their plant at 80 million gallons per year would be the seventh largest in the U.S. A lot of new facilities have been built in the last five years that are 15-30 million gallons, which were built primarily by farmer cooperatives. **REP. BALES** asked if more grain would be used in the proposed plant because of both wet and dry methods. **Gary Hebener** said they will be buying more bushels than a straight dry mill. It allows them to make more products than just ethanol, and that is the key to their economics.

**REP. SOMERVILLE** asked what the difference is between the current ethanol incentive program and HB 362. **Gary Hebener** said there is

existing legislation that said if an ethanol manufacturer builds a plant in Montana and uses biomass, meaning waste materials such as garbage or waste paper, then that plant is granted a 10-year holiday from property taxes. If it is a similar plant using grain, this exemption is not given. There is far more benefit to Montana in a plant that is consuming an excess agricultural product.

**REP. ESP** asked if the \$2.5 million in property taxes mentioned was after the plant was completely finished. **Gary Hebener** said it is taking equipment they buy and put on the site, even though it might not be employed. In 2001, about 60% of their equipment will be set on foundations, and it will take until 2002 to get everything finished. Once that equipment is sitting on the platform, under existing Montana law, they are obligated to pay taxes on this. About half of the \$2.5 million would be paid in 2001, but by the end of 2002 and thereafter they would be obligated to pay the full \$2.5 million.

**REP. WADDILL** asked if there is a fiscal note. **REP. McKENNEY** said there will not be a fiscal note because there is not cost to the state. These are taxes that are currently not being paid. **REP. WADDILL** asked what the potential impact for lost taxes would be. **REP. McKENNEY** said it is \$2.5 million per year not being paid for the business equipment tax.

**Closing by Sponsor:**

***{Tape : 1; Side : B; Approx. Time Counter : 27.2}***

**REP. McKENNEY** said HB 362 is an economic development bill that provides tax relief to assist a new industry for Montana. Ethanol is a clean burning and environmentally friendly fuel product. The raw material is grain, which Montana farmers grow in abundance. Ethanol is a perfect value added product into the state. High technology and manufacturing remain as some of the highest paying industries in the nation, and these have passed Montana by. There is an opportunity to bring a major manufacturing plant to the state and adds value to agriculture, which is one of the state's major industries.

**HEARING ON HB 369**

**Sponsor:**     **REPRESENTATIVE JESSE LASLOVICH, HD 57, Anaconda**

**Proponents:**     **Steve Yeakel, American Lung Association**  
                         **Erin McGowan, American Cancer Society**  
                         **Cliff Christian, American Heart Association**



**Opponents:** None.

**Opening Statement by Sponsor:**

***{Tape : 2; Side : A; Approx. Time Counter : 0.6}***

**REP. LASLOVICH** said this bill does not allow the sale of cigarettes to be sold in packs of less than 20 or rolling tobacco in less than 26 net weight ounces. This is a result of the tobacco settlement, and he read the clause from the settlement document. It removes the sunset stated in the settlement. Teens who do not have a lot of money will be less inclined to smoke if it costs more to buy larger packs.

**Proponents' Testimony:**

***{Tape : 2; Side : A; Approx. Time Counter : 5.5}***

**Chris Tweeten, Assistant Attorney General**, handed out and reviewed the background of the tobacco settlement.

**EXHIBIT (tah24a02)** In this settlement, the tobacco companies agreed to not sell cigarettes in packs fewer than 20. This prevented them from putting a pack of cigarettes within the price range where more people under 18 could afford to buy cigarettes. There is a proposed technical amendment which addresses an issue of calculating the tax. **EXHIBIT (tah24a03), EXHIBIT (tah24a04)** This bill is simple and has no opposition from the tobacco companies.

**Linda Lee, Governor's Advisory Council on Tobacco Use Prevention**, said their council voted unanimously to support this bill. Most people who use tobacco today started before they were 18, became addicted, and are now suffering the consequences of tobacco use. This is one way to reduce the amount of young people who start to use tobacco.

**Erin McGowan, American Cancer Society & American Heart Association**, said this bill will contribute to a lower rate of teen smoking. About 90% of current smokers started before the age of 18, and the tobacco companies are aware of this. She read a quote from a Phillip Morris document.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

***{Tape : 2; Side : A; Approx. Time Counter : 14.2}***

**REP. FUCHS** asked if cigars are affected by this bill. **Chris Tweeten** said there is a definition of cigarette that controls this part of the code, and this refers to tobacco wrapped in paper. Cigars are wrapped in tobacco, so by this definition cigars are excluded.

**REP. BALLYEAT** asked why this bill is needed if the tobacco companies already agreed not to sell cigarettes in packs of less than 20. **Chris Tweeten** said they agreed in the settlement they would not market these products in packs of less than 20, but they also insisted on a provision in the settlement that would sunset that restriction at the end of 2001. They also agreed that if states bring forward legislation to extend this requirements, they would not oppose the legislation. **REP. BALLYEAT** asked why more laws are needed to deter people under 18 from smoking when it is already illegal for them to do so. **REP. LASLOVICH** said he was using 18-20 year old people in his example. **REP. BALLYEAT** asked what this bill would do to prevent the tobacco companies from manufacturing packs of that have 20 smaller cigarettes. **REP. LASLOVICH** said they could do this if they wanted, but this would not be smart as their regular customers would probably not like it.

**REP. JACKSON** asked for a comment regarding the actual fiscal impact on taxes if this bill has any merit. **REP. LASLOVICH** said this bill has nothing to do with regard to the cigarette tax. **REP. JACKSON** asked if this bill was effective if it would decrease the demand and therefore decrease the receipts from the tax. **REP. LASLOVICH** said there will probably not be a significant loss in revenue because this is a prevention bill, and someone who is already buying cigarettes will not stop buying them as a result of this bill.

**REP. WAITSCHIES** asked how many companies are in the settlement and if there are currently some companies selling smaller packs who are not involved in the settlement. **Chris Tweeten** said the original participating manufacturers in the settlement were the "big four," which is about 97.5% of the cigarette market in the United States. There are dozens of other small companies that manufacture, import, and sell cigarettes. Since the settlement was signed in 1997, about 20 of these smaller companies have agreed to join, so now the participating manufacturers in the settlement represent 99% of the market. **REP. WAITSCHIES** asked if half packs are being sold right now in Montana. **Chris Tweeten** said that to his knowledge they are not because the settlement prohibits it.

**CHAIRMAN STORY** asked for an explanation regarding why the state would not receive as much money from the settlement if the Nonparticipating Manufacturer Statute passed last session is not enforced. **Chris Tweeten** said the tobacco companies were concerned in negotiating the settlement that by undertaking all of the financial obligations and restrictions on marketing they would be giving a competitive advantage to the small companies who did not agree to join the settlement. As a result, they asked the states to provide them with some protection from loss of market share. This nonparticipating manufacturers statute requires the cigarette manufacturers who did not join the settlement to set up an Escrow fund and place into it an amount of money that would be equivalent to what they would have had to pay the states if they had been in the settlement. This Escrow fund is then available for payments on judgements of lawsuits against these companies. The states are required under this statute to require the nonparticipating manufacturers to pay. The states who do not enforce this statute may lose some portion of their settlement money. **CHAIRMAN STORY** asked if an Escrow is set up in each state or if there is a master Escrow. **Chris Tweeten** said each company could set up a single Escrow account and then break it down for accounting purposes between the states.

**Closing by Sponsor:**

***{Tape : 2; Side : A; Approx. Time Counter : 27.1}***

**REP. LASLOVICH** said companies are already having to sell packs of no less than 20. This bill would just get rid of the sunset. This would not have any affect on people who are already smoking but hopefully one or two lives can be prevented by not starting to smoke.

**EXECUTIVE ACTION ON HB 369**

**Motion:** **REP. LASLOVICH** moved that **HB 369 DO PASS.**

**Motion/Vote:** **REP. LASLOVICH** moved that **HB 369 BE AMENDED** as shown in Exhibit 3. **Motion passed 20-0.**

**Motion:** **REP. LASLOVICH** moved that **HB 369 DO PASS AS AMENDED.**

**Discussion:** **REP. SCHMIDT** said she has been on the Governor's Advisory Council for Tobacco Prevention and anything we can do to stop somebody from starting to smoke is a small step. **REP. JACKSON** said this goes against what he believes because it is an

unwarranted intrusion on free enterprise, but since this is already a done deal, he will reluctantly vote for it.

**Motion/Vote: REP. LASLOVICH** moved that **HB 369 DO PASS AS AMENDED. Motion carried unanimously.**

**ADJOURNMENT**

Adjournment: 9:30 A.M.

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REP. BOB STORY, Chairman

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RHONDA VAN METER, Secretary

BS/RV

**EXHIBIT (tah24aad)**